

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:07-CV-166-H
ALL CASES

LEE LEWIS and JANICE HOSLER, et al.,

Plaintiffs,

v.

SMITHFIELD PACKING COMPANY, INC.,

Defendant.

**MEMORANDUM AND
RECOMMENDATION**

This case comes before the court on the consent motion (D.E. 331) of plaintiffs Lee Lewis, et al. ("plaintiffs") and defendant Smithfield Packing Company, Inc. ("defendant") for summary judgment dismissing the claims of certain opt-in plaintiffs on the grounds that defendant did not employ them. The motion is supported by the declaration of Teri Beard (D.E. 331-1), defendant's Human Resources Information System Benefits Manager.

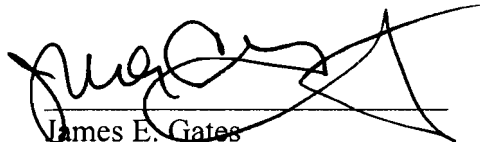
The Fair Labor Standards Act allows parties to recover unpaid overtime wages from their employer. 29 U.S.C. §§ 201, *et seq.* Defendant has no record that the plaintiffs listed below were employed by it. Plaintiffs' counsel concedes that there is no evidence that these plaintiffs were employed by defendant and that the claims are subject to dismissal pursuant to Rule 56 of the Federal Rules of Civil Procedure. The court finds that no genuine issues of material fact are presented and that the relief sought should be allowed.

For the foregoing reasons, it is RECOMMENDED that the parties' consent motion for summary judgment dismissing the opt-in plaintiffs below as not having been employed by defendant be ALLOWED and this action be DISMISSED as to them:

- | | |
|-----------------------------------|------------------------------|
| (1) Charles Rogers | (22) S. Frady Martin Padilla |
| (2) Javon Harvey | (23) Kathleen N. Whitted |
| (3) Stephen Evans | (24) Joe McCall |
| (4) William M. Lee, Jr. | (25) Alisha Marie Grant |
| (5) Dwon Poole | (26) Jason Wayne Byrd |
| (6) Maurice DiLee | (27) Gloria Ann Allen Jinks |
| (7) Berenice V. Concepcion | (28) Yalitzia Rentas Laporte |
| (8) Tasha D. Taylor McMillan | (29) Victoria Sanchez Nieves |
| (9) Josephine V. Lerma | (30) Diann Lee Adams |
| (10) Francisco Carrasco Matamoros | (31) Chyrell Lorinda Lane |
| (11) Peggy Quick Davis | (32) Nicholas Lamar Davis |
| (12) Timothy Hendrix Powell | (33) Bobby McKinney |
| (13) Terrell M. Charman | (34) Bairon Lopez Pineda |
| (14) Kimberly Alexander | (35) John Reyes |
| (15) Dexter L. Brooks, Jr. | (36) Sandra Lemus |
| (16) Shirley Ann Williams | (37) Axel McGrur |
| (17) Jannette Ilene Brumley | (38) James L. Hammonds |
| (18) Sylvia Jane Jones | (39) Tony Ray Billings |
| (19) Juan Francisco Morales | (40) Mallory Outar |
| (20) Cassie Jo Nelson Quick | (41) Alvin Percellgnee |
| (21) Karen Denise Lopez | |

The Clerk shall send copies of this Memorandum and Recommendation to counsel for the respective parties, who have 14 days, or such other period as the court specifies, to file written objections. Failure to file timely written objections bars an aggrieved party from receiving a de novo review by the District Judge on an issue covered in the Memorandum and Recommendation and, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Judge.

SO ORDERED, this 12th day of July 2010.


James E. Gates
United States Magistrate Judge